

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

<b>MICHAEL P. AND SHELLIE GILMOR,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 4:10-CV-00189-ODS</b>
	)	
<b>PREFERRED CREDIT CORPORATION,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**RESPONSE TO ORDER DIRECTING PLAINTIFFS TO SHOW CAUSE WHY  
DEFENDANT CREDIT-BASED ASSET SERVICE AND SECURITIZATION, LLC  
SHOULD NOT BE DISMISSED**

In response to the Court’s Order Directing Plaintiffs to Show Cause Why Defendant Credit-Based Asset Service and Securitization, LLC Should Not be Dismissed (Doc. No. 359), Plaintiffs respectfully submit that the claims against Defendant Credit-Based Asset Service and Securitization, LLC (“C-BASS”), as asserted in the Seventh Amended Complaint, should not be dismissed, but should instead be held in abeyance until such claims have been fully liquidated or otherwise resolved in the United States Bankruptcy Court for the Southern District of New York or, if need be, in this Court. In support of this request, Plaintiffs state as follows:

1. As counsel for C-BASS noted in their latest Status Report (Docket No. 356), on April 18, 2011, Joseph and Amy Black, Beverly Cauthon, Guy Raynor and Jeri Cain (formerly Jeri Raynor), and Stephen and Phyllis Ebert (the “Claimants”) filed proofs of claim (the “Claims”) in C-BASS’ bankruptcy case pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Case”).

2. On April 25, 2011, Plaintiffs filed their Seventh Amended Complaint in this case alleging, *inter alia*, that C-BASS “is a New York corporation currently in bankruptcy and against

which this action is stayed pursuant to 11 U.S.C. § 362(a) pending further order of the bankruptcy court.” *See* Seventh Amended Complaint (Doc. No. 258), at ¶ 43.

3. On April 25, 2011, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered its order confirming C-BASS’ chapter 11 plan of liquidation (the “Plan”) with an effective date of April 29, 2011. [Bankruptcy Court Docket No. 403].

4. Pursuant to the terms of the Plan, the Trustee for the C-BASS Liquidation Trust (the “C-BASS Trustee”) is responsible for resolving the Claims asserted against C-BASS in the Bankruptcy Case.

5. Counsel for the Plaintiffs/Claimants, through their New York co-counsel in the bankruptcy Case, are in the process of pursuing claims against C-BASS and hope to resolve such claims with the C-BASS Trustee.

6. In the event the Claimants and the C-BASS Trustee are unable to resolve the Claims without litigation, Claimants may move the Bankruptcy Court to abstain from hearing the Claims and modify the Plan injunction to allow the Class Claimants to complete the prosecution of their Claims against C-BASS in this pending action, with directions to the parties to return to this Bankruptcy Court to enforce the final judgments pursuant to the terms of the Plan.

7. In the event such relief is granted, Plaintiffs intend to move this Court to substitute the C-BASS Trustee as a Defendant in this action so that the Claims can be prosecuted to a final judgment to be enforced by the Bankruptcy Court in accordance with the terms of the Plan.

WHEREFORE, Plaintiffs’ respectfully submit that the claims against Defendant Credit-Based Asset Service and Securitization, LLC, as asserted in the Seventh Amended Complaint,

should not be dismissed, but should instead be held in abeyance until such claims have been fully liquidated or otherwise resolved in the United States Bankruptcy Court for the Southern District of New York or, if need be, in this Court.

Dated: October 17, 2011

Respectfully submitted,

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 17<sup>th</sup> day of October, 2011, I electronically filed the above and foregoing document with the Clerk of Court using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants.

/s/Bruce V. Nguyen